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15 **UNITED STATES DISTRICT COURT**
16 **DISTRICT OF ARIZONA**

17 Kimberly Spitler, on behalf of herself and
18 all those similarly situated,

19 Plaintiff,

20 v.

21 State of Arizona,

22 Defendant.

Case No. 2:19-cv-04859-DWL

**FIRST AMENDED CIVIL
COMPLAINT**

[JURY TRIAL DEMANDED]

23 Plaintiff Kimberly Spitler (“Plaintiff”), on behalf of herself and all others similarly
24 situated, alleges the following for her Complaint against the State of Arizona (the “State”).

25 **I. NATURE OF THE CASE**

26 1. Plaintiff brings this action against the State for unlawful failure to pay
27 overtime wages owed in violation of A.R.S. § 23-391 and A.R.S. § 23-350 *et seq.* (A.R.S.
28 §§ 23-391 and 350 collectively referred to as the “Arizona Wage Statute”); and as an
alternative equitable claim, for unjust enrichment pursuant to Arizona law.

2. Plaintiff alleges on behalf of herself and all other similarly situated, hourly
case managers of the State’s Department of Economic Security, Division of Developmental

Disabilities (the “DDD”), that they are entitled to unpaid wages, including unpaid overtime, for all hours worked exceeding forty (40) hours in a workweek, statutory damages, and attorneys’ fees and costs.

3. For at least three years prior to the filing of this action (the “Liability Period”), the State has had a consistent policy or practice of suffering or permitting Plaintiff and the similarly situated case workers to work in excess of forty (40) hours per week without paying them proper overtime compensation and without timely paying wages due as required by the Arizona Wage Statute.

4. This lawsuit is also brought as a class action under Federal Rule of Civil Procedure 23, to recover unpaid compensation and treble damages resulting from the State’s violations of the Arizona Wage Statute and for equitable relief under State law. For class action purposes, the proposed Class consists of:

All current and former case managers or support coordinators employed by the State at the Department of Economic Security Division of Developmental Disabilities, regardless of actual title, during the Liability Period (the “Class Members”).

5. Plaintiff filed a notice of claim pursuant to A.R.S. § 12-821.01 on April 12, 2019.

II. JURISDICTION AND VENUE

6. This Court has discretion to retain jurisdiction over this matter pursuant to the State’s removal of this action from the Superior Court of Arizona and pursuant to 28 U.S.C. §§ 1331, 1367, 1441(a)(b) and 1446. *See* Doc. 1. Venue is proper under 28 U.S.C. § 1391(b) and (c) because the State employed Spitler in this District, the State conducts business in this District, and all or a substantial part of the events or omissions giving rise to the claims occurred in this District.

7. Should this Court remand this action, the Superior Court of Arizona also has jurisdiction over this matter by virtue of Ariz. Const. Art. VI, § 14, and A.R.S. § 12-123 and because the amount in controversy in this action exceeds the jurisdictional sum. Venue is

proper in Maricopa County, Arizona by virtue of A.R.S. § 12-401 and Ariz. Const. Art. XIV § 8.

III. PARTIES

8. At all times relevant to the matters alleged herein, Plaintiff resided in the State of Arizona in Maricopa County, and the State employed Plaintiff in Maricopa County.

9. Plaintiff is a full-time employee of the DDD in Maricopa County and began her employment there on August 17, 2017.

10. The DDD is an agency of the State and does business in Arizona by providing case management services for developmentally disabled members of the Arizona Long Term Care System (“ALTCS”).

11. The State is an employer within the meaning of the Arizona Wage Statute. A.R.S. § 23-350(3). The State carried out pay policies and payroll practices for Plaintiff and the Class Members’ compensation including the overtime they were owed.

12. Plaintiff and the other similarly situated Class Members are employees as defined in A.R.S. § 23-350(2).

13. At all relevant times, the State was an employer as defined by A.R.S. § 350(3) and the State is subject to suit for unpaid overtime as an employer under the Arizona Wage Statute. A.R.S. §§ 23-350-355; A.R.S. § 23-391.

14. At all relevant times, DDD has been enterprise to which the Fair Labor Standards Act (“FLSA”) overtime regulations apply pursuant to A.R.S. § 23-391 and A.A.C. R2-5A-404(A) and (C).

IV. CLASS ACTION ALLEGATIONS

15. The state law claims under the Arizona Wage Statute and Arizona common law are brought as a class action under Federal Rules of Civil Procedure 23(a), (b)(1), (b)(2), and (b)(3). The Class is defined in paragraph 4 above.

16. At all relevant times, the State’s illegal overtime and wage practices have been widespread with respect to the proposed Class. The State’s failure to pay proper overtime

1 and failure to timely pay wages due has not been the result of random or isolated individual
2 management decisions or practices.

3 17. The State's overtime and wage practices have been routine and consistent.
4 Throughout the past three years, Class Members have regularly not been paid the proper
5 overtime and timely wages due despite earning such wages.

6 18. The State's failure to pay overtime compensation and timely wages due
7 results from generally applicable policies and practices and does not depend on the personal
8 circumstances of individual Class Members. Thus, Plaintiff's experience is typical of the
9 experience of other Class Members employed by the State.

10 19. All Class Members, including Plaintiff, are entitled to overtime compensation
11 for hours worked in excess of forty (40) and timely payment of wages due. Although the
12 issue of damages may be individual in character, there is no detraction from the common
13 nucleus of facts pertaining to liability.

14 20. The State has employed a large number of case managers for DDD. The
15 proposed Class Members are so numerous that joinder of all Class Members is
16 impracticable. Upon information and belief there are several hundred members of the
17 proposed class. Class Members can readily be identified from business records maintained
18 by the State.

19 21. Questions of law and fact common to the Class Members predominate over
20 questions that may affect only individual members because the State has acted on grounds
21 generally applicable to all Class Members. Among the questions of law and fact common
22 to Plaintiff and the Class Members are:

- 23 a. whether the State employed the Class Members within the meaning of
24 the Arizona Wage Statute;
- 25 b. whether the State owes the Class Members overtime wages in
26 exchange for work performed in excess of forty hours per week;
- 27 c. whether the State owes the Class Members wages in exchange for all
28 work performed for the DDD;

- d. whether the State unlawfully failed to timely pay Class Members wages for all hours worked;
- e. whether the State is liable for damages under Arizona Wage Statute, including but not limited to compensatory damages, interest, and treble damages;
- f. whether the State was unjustly enriched as a result of its wages practices in violation of Arizona law.

22. Plaintiff's claims under Arizona state law are typical of those of the Class Members, in that class members have been employed in the same or similar positions as Plaintiff and were subject to the same or similar unlawful pay practices as Plaintiff.

23. The common questions set forth above predominate over any questions affecting only individual persons, and a class action is superior with respect to considerations of consistency, economy, efficiency, fairness, and equity to other available methods for the fair and efficient adjudication of the Arizona state law claims.

24. A class action is appropriate for the fair and efficient adjudication of this controversy. The State acted or refused to act on grounds generally applicable to the entire class. The presentation of separate actions by individual Class Members could create a risk of inconsistent and varying adjudications, establish incompatible standards of conduct for the State, and/or substantially impair or impede the ability of the Class Members to protect their interests. The damages suffered by individual Class Members may be relatively small, and the expense and burden of individual litigation make it virtually impossible for the members of the class action to individually seek redress for the wrongs done to them.

25. Plaintiff will fairly and adequately represent the interests of the Class Members and has retained counsel that is experienced and competent in the fields of wage and hour law and class action litigation. Plaintiff has no interest that is contrary to or in conflict with those members of this class action.

26. This action is maintainable as a class action under Rule 23(b)(1) because prosecution of separate actions by or against individual members of the class would create

1 risk of: (A) inconsistent or varying adjudications with respect to individual members of the
2 class which would establish incompatible standards of conduct for the party opposing the
3 class, or (B) adjudications with respect to individual members of the class which would as
4 a practical matter be dispositive of the interests of the other members not parties to the
5 adjudications or substantially impair or impede their ability to protect their interests.

6 27. This action is maintainable as a class action under Rule 23(b)(2) because
7 the State “has acted or refused to act on grounds generally applicable to the class,” thereby
8 making appropriate final injunctive relief or corresponding declaratory relief with respect
9 to the class as a whole. Unless an injunction is issued, the State will continue to commit the
10 violations alleged and the members of the Class and future employees of the State will
11 continue to be subjected to the State’s wrongful practices.

12 28. This action is maintainable as a class action under Rule 23(b)(3) because
13 questions of law or fact common to the Class predominate over any questions affecting only
14 individual members.

15 29. In addition, a class action is superior to other available methods for the fair
16 and efficient adjudication of the controversy. The Arizona Wage Statute recognizes that
17 employees who are denied their wages often lack the ability to enforce their rights against
18 employers with far superior resources. Further, because the damages suffered by individual
19 Class Members may be relatively small, the expense and burden of individual litigation
20 makes it difficult for members of the Class to individually redress the wrongs done to them.

21 30. Plaintiff’s Arizona claims are easily managed as a class action. The issue of
22 liability is common to all Class Members. Although the amount of damages may differ by
23 individual, the damages are objectively ascertainable and can be straightforwardly
24 calculated.

25 V. FACTUAL BACKGROUND

26 31. The DDD provides a range of behavioral and integrated healthcare and
27 wellness services to developmentally disabled adults and children who are members of the
28 Arizona Long Term Care System (“ALTCS”).

1 32. Plaintiff and the other Class Members are or were case managers/support
2 coordinators employed by the State through the DDD to provide case management services
3 for ALTCS' developmentally disabled members.

4 33. Funds for ALCTCS are administered by the Arizona Health Care Cost
5 Containment System ("AHCCCS"), and AHCCCS sets standards and policies related to
6 case management for members of ALTCS in the AHCCCS Medical Policy Manual.

7 34. Pursuant to Section 1630 of the AHCCCS Medical Policy Manual, "A DDD
8 case manager's caseload must not exceed a per District average ratio of 1:40 members,
9 regardless of setting."

10 35. However, during the Liability Period, Plaintiff and the other Class Members
11 routinely handled caseloads of more than eighty (80) members at a time, which is far greater
12 than the maximum case load the DDD is supposed to assign to them.

13 36. As part of their regular responsibilities for this heavy caseload, Plaintiff and
14 the other Class Members were required to perform a number of duties including, among
15 other things, conducting on-site visits with members/representatives every 90 days;
16 conducting regular needs assessments for members; verifying that needed services are
17 available for members in the members' communities; facilitating placement/services for
18 members; developing written service plans that reflect services that will be authorized;
19 making efforts to ensure that members understand the service plans; completing backup
20 plans for members who receive certain critical services; assisting members who live in their
21 own homes with disaster/emergency plans; for members admitted to nursing facilities,
22 ensuring and documenting that pre-admission screenings and resident review screenings
23 have been completed prior to admission; updating the FOCUS System within ten days of
24 initial visits; conducting ongoing monitoring of the services and placement of each member
25 assigned to their caseloads in order to assess the continued suitability and cost effectiveness
26 of the services and placement in meeting members' needs and the quality of care delivered
27 by members' service providers; attending nursing facility care conferences to discuss
28 members' needs and services jointly with the members, care providers and the members'

1 families; attending meetings for any and all home modifications for members' homes; and
2 attending team meetings for those members who will be released from jail or prison to
3 ensure they receive a "warm welcome" and a place to reside upon release.

4 37. Plaintiff and the other Class Members were hourly employees eligible for
5 overtime compensation pursuant to A.R.S. § 23-391, an Arizona statute that governs
6 overtime for State employees like Plaintiff and the other Class Members, and follows the
7 principles of the FLSA and incorporated the FLSA regulations by reference.

8 38. Plaintiff and the Class Members earned an hourly wage, with Plaintiff earning
9 \$19 per hour for regular hours worked.

10 39. Case managers officially worked five 8-hour shifts or four 10-hour shifts per
11 week.

12 40. However, during the Liability Period, Plaintiff and the Class Members were
13 required to work in excess of forty hours per week on their assigned cases in order to remain
14 in compliance with AHCCCS requirements.

15 41. If the case managers did not complete work on their assigned cases in a timely
16 manner, they were subject to discipline.

17 42. In addition, if the case managers did not complete their case work in a timely
18 fashion, their Managing Accountability and Performance ("MAPS") scores would be
19 negatively affected, and their eligibility for a merit increase would be negatively impacted
20 and opportunities for advancement would be limited.

21 43. The State would pay overtime wages to Plaintiff and the other Class Members
22 for working on cases not in their regular caseloads when case managers from other units
23 were unable to stay in compliance, but would only assign the Plaintiff and the other Class
24 Members those cases if Plaintiff and the other Class Members were up to date on their
25 regularly assigned cases.

26 44. In order to complete work on their regular cases, Plaintiff and the Class
27 Members worked 60 to 70 hours per week during a typical week.

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1 of the names and addresses of all Class Members;

2 B. Authorize Plaintiff's counsel to issue notice at the earliest possible time to all
3 Class Members, informing them that this action has been filed and the nature
4 of the action, and of their right to damages in this lawsuit if they worked in
5 excess of forty (40) hours in a week during the past three years but were not
6 paid overtime as required by the Arizona Wage Statute.

7 D. Declare that the State has willfully violated and is willfully violating A.R.S.
8 § 23-391 *et seq.* and A.R.S. 23-350 *et seq.*;

9 E. Declare the State has been unjustly enriched;

10 F. Certify the state law claims above as a class action pursuant to Rule 23 of the
11 Arizona Rules of Civil Procedure;

12 G. Designate Plaintiff Kimberly Spitler as the Class Representative of the other
13 Class Members and undersigned counsel as the attorneys representing the
14 other Class Members;

15 H. Award Plaintiff and all similarly situated employees compensatory damages,
16 including treble damages and statutory penalties pursuant to A.R.S. § 23-355;

17 I. Award quantum meruit relief;

18 J. Award reasonable attorneys' fees pursuant to the Arizona Wage Statute and
19 A.R.S. § 12-341.01;

20 K. Award pre- and post-judgment interest; and

21 L. Award such other monetary, injunctive, equitable, and declaratory relief as
22 the Court deems just and proper.

23 **XII. JURY DEMAND**

24 Plaintiff, on behalf of herself and the Class Members, demands a jury trial to the
25 extent authorized by law.

26 Dated this 20th day of August 2019.

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1 ROBAINA & KRESIN PLLC

2
3 By /s/ Edmundo P. Robaina
4 Edmundo P. Robaina

5 BONNETT, FAIRBOURN, FRIEDMAN
6 & BALINT, P.C.

7 Ty D. Frankel

8 *Attorneys for Plaintiff*

9
10 **CERTIFICATE OF SERVICE**

11 I hereby certify that on the 20th day of August 2019, I caused the foregoing document
12 to be electronically transmitted to the Clerk's Office using the CM/ECF System for filing
13 and transmittal to the following CM/ECF Registrants:

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